

REMARKS

Claims 2, 8-9, 16-17, 22, and 28 are cancelled and claims 31-36 are new; thus, claims 1, 3-7, 10-15, 18-21, 23-27, and 29-36 are all the claims pending in the application. Claims 1-30 stand rejected on prior art grounds. Claims 1-30 are rejected under 35 USC §101; and, claims 12-19 are rejected under 35 USC §112, second paragraph. Applicants respectfully traverse the rejections based on the following discussion.

I. The 35 USC §101 Rejections

Claims 1-30 are rejected under 35 USC §101 because the Examiner asserts that they recite mental steps that are not tied to a statutory category such as a machine or manufacture. Applicants traverse the rejections because the amended claims are tied to a particular machine (i.e., the resource allocator); and as such, the claims are directed to statutory subject matter under 35 USC §101.

More specifically, Applicants have amended independent claim 1 to define “automatically allocating the computing resources from a resource allocator” and independent claim 12 to define “invoking an automatic hardware allocation utility of a resource allocator”. Original independent claim 21 defines “a resource allocator analyzes the collected performance data”.

The Court of Appeals for the Federal Circuit has held that “an applicant may show that a process claim satisfies 35 U.S.C.S. § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article”. *In re Bilski*, 545 F.3d 943, 961 (Fed. Cir. 2008). “[A] claim that purportedly lacks any ‘physical steps’ but is still tied to a machine or achieves an eligible transformation passes muster under §101”. *Id.* As described in paragraph [0027] of Applicants’ application, FIG. 2 is a block diagram illustrating a high-level architecture of system 10. System 10 includes a performance agent 205, a resource allocator 210, a resource identification algorithm 215, and a collection database 220 (also referenced herein as collection dB 220). The performance agent 205 is installed on the computing resource of the user such as computers 20, 25, 30. The resource allocator 210, the resource identification algorithm 215, and the collection dB 220 are installed on the server 15.

Applicants submit that claims 1-30 are tied to a particular machine (i.e., the resource allocator 210); and as such, the claims are directed to statutory subject matter under 35 USC §101. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejection.

II. The Rejections Based on 35 U.S.C. §112, Second Paragraph

Claims 12-19 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter

which Applicants regard as the invention. Specifically, the Office Action asserts that it is not clearly indicated whether the term “level” in claim 12 refers to a performance level (Office Action, p. 3, item 3). Applicants have amended claims 10-12, 18-19, and 29-30 to define a “job level”. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejection.

III. The Prior Art Rejections

A. The Rejections Based on Steele

1. The user’s job description and job level

Claims 12-15 and 20 stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Steele et al. (U.S. Publication No. 2004/0117476), hereinafter referred to as Steele. Applicants traverse the rejections because Steele does not disclose the claimed feature of “correlating the first set of metrics and the second set of metrics with a user’s job description and job level to create a metrics table” as defined in independent claim 12.

Applicants submit that nothing within Steele mentions the job description or the job level of the user. Steele does not disclose a metrics table that is utilized to allocate resources, wherein the metrics table includes the job description and the job level of the user. Instead, Steele discloses “load balancing”, i.e., allocating resources based on the usage and availability of the resources.

More specifically, as described in paragraph [0058] of Steele, enterprise performance metrics 905 are retrieved by the appropriate control plane 907 and then analyzed by an analysis engine 908 to identify recommended load balancing. The analysis engine compares loads on resources and determines whether an enterprise is under-utilizing or over-utilizing VLAN resources. If, for instance, Enterprise A 901 has excess disk capacity and Enterprise B 903 has a need for disk capacity, the control plane 907 can automatically reallocate the disk drives within its control. In some cases, reallocation cannot take place at the control plane level, because sufficient resources are not available. In this case, the load balancing recommendations can be viewed at the NOC 909. It may be that one control plane has insufficient resources, but another has a glut of resources. In one embodiment, a NOC operator reallocates resources among two or more control planes within the UDC. In some cases additional resources must be deployed in the UDC to accommodate additional demand.

Accordingly, Applicants submit that nothing within Steele discloses allocating resources using a metrics table that includes the job description and job level of a user. Instead, Steele allocates resources based on resource usage/availability. Therefore, it is Applicants' position that Steele fails to disclose the claimed feature of "correlating the first set of metrics and the second set of metrics with a user's job description and job level to create a metrics table" as defined in independent claim 12.

2. *Excessive paging activity*

In addition, Applicants traverse the rejections because Steele does not disclose the claimed feature of “collecting a plurality of performance data including a time percentage in which a computing resource is engaged in excessive paging activity” as defined in dependent claim 13 and “analyzing the collected performance data to determine if there exists an actionable item” as defined in dependent claim 20. Applicants submit that nothing within Steele mentions the paging activity of a computing resource. Instead, Steele merely discloses “performance metrics” without specifying what the metrics include.

More specifically, as described in paragraph [0058] of Steele, enterprise performance metrics 905 are retrieved by the appropriate control plane 907 and then analyzed by an analysis engine 908 to identify recommended load balancing. The analysis engine compares loads on resources and determines whether an enterprise is under-utilizing or over-utilizing VLAN resources. If, for instance, Enterprise A 901 has excess disk capacity and Enterprise B 903 has a need for disk capacity, the control plane 907 can automatically reallocate the disk drives within its control.

Nevertheless, nothing within Steele discloses that such performance metrics include excessive paging activity. To the contrary, as described in paragraph [0037] of Applicants’ application, the determination by system 10 of acceptable excessive paging in computers 20, 25, 30 can be determined by employee band and employee function. For

example, a much higher level of excessive computer paging is tolerated for clerical employees at band 6 than for developer employees at band 10. As further described in paragraph [0040] of Applicants' application, when the resource allocator 210 identifies a trend of unacceptable excessive paging on, for example, computer 20, the resource allocator 210 outputs an request for an automatic distribution of memory for computer 20. The unacceptable excessive paging is defined by the guidelines laid out for the employee level and function.

Applicants submit that nothing within Steele mentions the paging activity of the computing resources. Instead, Steele merely discloses "performance metrics" without specifying what the metrics include. Therefore, it is Applicants' position that Steele fails to disclose the claimed feature of "collecting a plurality of performance data including a time percentage in which a computing resource is engaged in excessive paging activity" as defined in dependent claim 13.

B. The Rejections Based on Steele in view of Deng

1. *The job description and job level of the user*

Claims 16-19 stand rejected under 35 U.S.C. §103(a) as unpatentable over Steele in view of Deng et al. (U.S. Publication No. 2001/0039581), hereinafter referred to as Deng. Applicants traverse the rejections because the proposed combination of Steele and Deng fail to teach the claimed features of an "allowable component performance of the

component resource correlated with the job description and job level of the user” or an “allowable system performance of the computing resource correlated with the job description and job level of the user” as defined in dependent claims 18 and 19, respectively.

The Office Action argues that Steele discloses that the allowable performance of the component and system resources are correlated with the job description or job level of a user (Office Action, p. 7, item 13 (citing para. 58 and 67)). Applicants respectfully disagree and submit that, as described more fully above in section A, nothing within Steele mentions the job description or job level of a user.

Contrary to the claimed invention, the allowable performance of the resources in Steele is correlated with the usage or availability of the resources. As also described more fully above, Steele compares loads on resources and determines whether a user/enterprise is under-utilizing or over-utilizing resources. For example, if Enterprise A 901 has excess disk capacity and Enterprise B 903 has a need for disk capacity, the control plane 907 can automatically reallocate the disk drives within its control (e.g., Steele, para. [0058]).

The Office Action also argues that Deng teaches metrics comprising the job description and job level of a user (Office Action, pp. 6-7, items 10 and 12 (citing Deng, para. 12 and 14)). Applicants respectfully disagree and submit that nothing within Deng mentions the job description or job level of the user. Rather, the cited portions of Deng

disclose a method for managing client requests to access a networked client-server.

Specifically, Deng analyzes patterns in client requests to the server along with the compatibility of system hardware and software in order to determine the expected demand on server resources. Nothing within Deng discloses analyzing the job description or level of the “clients”.

Accordingly, Applicants submit that the nothing within the cited references teaches that the “allowable performance” of component and system resources is correlated with the job description and job level of a user. Instead, the allowable performance of the resources in Steele is correlated with the usage or availability of the resources. Moreover, the system resources in Deng are managed based on patterns in client requests. Therefore, it is Applicants’ position that the proposed combination of Steele and Deng fails to teach the claimed features of an “allowable component performance of the component resource correlated with the job description and job level of the user” or an “allowable system performance of the computing resource correlated with the job description and job level of the user” as defined in dependent claims 18 and 19, respectively.

C. The Rejections Based on Grumann in view of Steele

1. *The job description and job level of the user*

Claims 1-11 and 21-30 stand rejected under 35 U.S.C. §103(a) as unpatentable over Grumann et al. (U.S. Publication No. 2001/0165892), hereinafter referred to as Grumann, in view of Steele. Applicants traverse the rejections because the proposed combination of Grumann and Steele fails to teach the claimed features of applying a plurality of metrics including the job description and job level of the user to filter the collected performance data as defined in independent claims 1 and 21.

Applicants submit that nothing within Grumann mentions the job description or job level of a user. The Office Action does not assert that such features are disclosed in Grumann; rather, the Office Action cites Grumman to argue that other features of Applicants' application (e.g., collecting performance data, applying rules, allocating resources, etc.) are taught by the prior art (Office Action, pp. 7-10, items 15-22).

The Office Action relies upon Steele to argue that the prior art discloses metrics comprising the job description and job level of a user (Office Action, p. 10, items 23-24). However, as described more fully above, nothing within Steele mentions the job description or job level of a user. Instead, Steele teaches allocating resources based on the usage or availability of the resources.

Accordingly, it is Applicants' position that neither Grumann nor Steele mentions the job description and job level of a user. Therefore, Applicants submit that the

proposed combination of Grumann and Steele fails to teach the claimed features of “applying a plurality of metrics including the job description and job level of the user to filter the collected performance data” as defined in independent claim 1, and “a resource identification module applies a plurality of metrics including a job description and job level of a user to filter the collected performance data” as defined in independent claim 21.

2. *Excessive paging activity*

In addition, Applicants traverse the rejections because the proposed combination of Grumann and Steele fails to teach the claimed feature of collecting a plurality of performance data including a time percentage in which a computing resource is engaged in excessive paging activity as defined in independent claims 1 and 21.

Citing paragraphs 12 and 48 of Grumann, the Office Action argues that such features are taught in Grumann (Office Action, p. 9, item 18). Applicants submit that nothing within Grumann, including the portions cited by the Office Action, mentions the paging activity of a computing resource. Instead, the portions of Grumann cited by the Office Action merely discuss performance monitoring tools and metrics that include availability, capacity, current throughput, current average service time, queue length, overall utilization, service violations, and user satisfaction. However, the metrics in Grumann do not include the paging activity of a computer resource.

Accordingly, Applicants submit that neither Grumann nor Steele mentions the paging activity of a computing resource. As described more fully above in Section A, Steele merely discloses “performance metrics” without specifying what the metrics include. Therefore, it is Applicants’ position that the proposed combination of Grumann and Steele fails to disclose the claimed feature of “collecting a plurality of performance data including a time percentage in which a computing resource is engaged in excessive paging activity” as defined in independent claim 1, and “a performance agent that collects a plurality of performance data including a time percentage in which a computing resource is engaged in excessive paging activity” as defined in independent claim 21.

Therefore, it is Applicants’ position that the prior art of record does not teach many features defined by independent claims 1, 12, and 21 and that such claims are patentable over the prior art of record. Further, it is Applicants’ position that dependent claims 3-7, 10-11, 13-15, 18-20, 23-27, and 29-36 are similarly patentable, not only because of their dependency from a patentable independent claims, but also because of the additional features of the invention they defined. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections.

II. Interview Summary

The undersigned attended a telephonic interview on March 10, 2009. Applicants thank the Examiner for speaking with him to discuss this patent application. Applicants submit this Summary of the Interview.

A. Nature of any exhibit or demonstration

No exhibits or demonstration was used.

B. Claim identification

Claims 1-2, 12, and 21 were discussed.

C. Prior art discussed

Steele, Deng, and Grumann were discussed.

D. Identification of proposed amendments

Proposed amendments to independent claims 1, 12, 21 were discussed, specifically, the “job description and job level of a user” limitation and the “time percentage in which a computing resource is engaged in excessive paging activity” limitation.

E. Identification of arguments

Arguments made in this Amendment regarding the “job description and job level of a user” limitation and the “time percentage in which a computing resource is engaged in excessive paging activity” limitation were discussed during the interview.

F. Identification of other pertinent matters

The 35 U.S.C. 101 rejection was discussed. The Examiner advised that the claims must not be directed towards “software per se”.

In response to this Amendment, Applicant understands that a supplemental check of the art will be done to confirm that the claims are patentable. Assuming no art is found, a notice of allowance will be forthcoming.

G. General results of interview

Applicants notified the Examiner of the proposed claim amendments and argued that such limitations are not taught by the prior art of record.

III. Formal Matters and Conclusion

In view of the foregoing, Applicants submit that claims 1, 3-7, 10-15, 18-21, 23-27, and 29-36, all the claims presently pending in the application, are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary.

[SIGNATURE PAGE FOLLOWS]

Appl. No. 10/816,619
Amdt. dated March 10, 2009
Reply to Office Action of January 13, 2009
Atty. Dkt. No.: YOR920040054US1

Respectfully Submitted,

/Duane N. Moore/
Duane N. Moore
Registration No. 53,352

CAHN & SAMUELS, LLP
1100 17th Street, NW, Suite 401
Washington, DC 20036

Date: March 10, 2009